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5 **DISTRICT COURT OF GUAM**
6 **TERRITORY OF GUAM**

7 JACOB CRUZ,
8
9 Plaintiff,

10 vs.
11 GREGORIO SALAS CALVO, *et. al.*,
12 Defendants.

Civil Case No. 06-00031

ORDER

13 This matter comes before the court because plaintiff, Jacob Cruz, (“Cruz”) proceeding *pro*
14 *se*, has filed an amended complaint in the above-captioned matter pursuant to this court’s Order
15 of December 28, 2006 (“Order”). *See* Docket No. 20. Initially, Cruz filed a *pro se* complaint
16 alleging violations of the Civil Rights Act of 1964, § 504 of the Rehabilitation Act of 1973 as
17 amended through 1998 (“RA”) and the Americans with Disabilities Act (“ADA”), contending that
18 he was denied services due to discrimination as a result of his disabilities. *See* Docket Nos. 1 &
19 6. Defendants filed a motion to dismiss pursuant to FED. R. CIV. P. 12 (b)(6). A hearing was held
20 on the matter, after which the court issued its decision in the written order of December 28, 2006.

21 In it’s order the court allowed Cruz to amend his complaint to add additional facts to
22 support his claims and to allege “intentional discrimination” and “deliberate indifference”
23 regarding his claims for compensatory damages. Order at 6-7. The court expressly cautioned Cruz
24 that “absent an amendment conforming with this court’s order, **ALL** causes of action as to
25 Defendants will be dismissed.” In addition to providing specific information about what the
26 amendments should entail, the court also provided guidance and the following warnings:

- 27 1. [t]he Amended Complaint must be retyped or rewritten in its
28 entirety and may not incorporate any part of the original
 Complaint (or supporting documentation) by reference . . .

- 1 2. [i]f Cruz wishes to include the information previously
2 submitted in the original complaint or the supporting
3 documents submitted via letter (Docket No. 6) he must
3 retype them into his amended complaint or attach the
supporting documents to the Amended Complaint . . .
- 4 3. Cruz should take notice that all causes of action alleged in
5 a complaint which are not alleged in an amended complaint
are waived. (citations omitted).

6 Order at 8.

7 The court has reviewed Cruz's amended complaint and finds that the complaint is defective
8 pursuant to G.R. 5.1, LR 10.1 of the Local Rules of the District Court of Guam and Rules 8(a) and
9 10 of the Federal Rules of Civil Procedure.¹ A federal court may dismiss a complaint *sua sponte*
10 if jurisdiction is lacking. *Southern Pacific Transportation Co. v. City of Los Angeles*, 922 F.2d
11 498, 502 (9th Cir.1990), *cert. denied*, 112 S.Ct. 382 (1991); FED.R.CIV.P. 12(h)(3).² Despite this
12 court's warnings regarding the requirements for filing his amended complaint, Cruz failed to re-
13 allege any of the facts in his initial complaint. Instead it appears that Cruz has chosen to try to
14 supplement his initial complaint. This is not proper. Even upon a liberal review of Cruz's filings,
15 the court can not find any legal or factual basis supporting his claims as they are stated in the
16 amended complaint. The amended complaint utterly fails to state a cognizable claim for relief and
17 is not in compliance with this court's Order of December 28, 2006.

18 Cruz was advised that failure "to comply with every provision" of the Order would result
19 in a dismissal pursuant to Rule 41(b) FED.R.CIV.P. However, in light of the fact that Cruz did
20 previously plead sufficient facts with respect to the majority of his claims and that he is proceeding
21 *pro se*, this court will allow Cruz a final opportunity to once again amend his complaint to conform
22 with the court's previous Order. Cruz shall submit a Second Amended Complaint by March 12,

24 ¹ FED.R.CIV.P 8(a) states in pertinent part:

25 A pleading which sets forth a claim for relief . . . shall contain (1) a short and
26 plain statement of the grounds upon which the court's jurisdiction depends, unless
27 the court already has jurisdiction to support it, (2) a short and plain statement of
the claim showing that the pleader is entitled to relief, and (3) a demand for
judgment for the relief the pleader seeks . . .

28 ² FED.R.CIV.P. 12(h)(3) states: "[w]henever it appears by suggestion of the parties or otherwise that the court
lacks jurisdiction of the subject matter, the court shall dismiss the action."

1 2007. Absent an amendment *conforming* with this court's order, **ALL** causes of action as to
2 Defendants will be dismissed.

3 The Second Amended Complaint must be retyped or rewritten in its entirety and may not
4 incorporate any part of the two previous complaints (or supporting documentation) by reference.

If Cruz wishes to include the information previously submitted in the original complaints or the supporting documents submitted via letter (Docket No. 6) he must retype them into his amended complaint or attach the supporting documents to the amended Complaint. Any amended complaint submitted by Cruz should be clearly designated as the Second Amended Complaint on the face of the document. Cruz is advised to pay close attention to the Local and Federal Rules regarding the form, content and formatting of his document.² Again, Cruz should take notice that all causes of action alleged in a complaint which are not alleged in an amended complaint are waived. *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990).

WARNING OF POSSIBLE DISMISSAL

15 Cruz should take notice that if he fails to timely comply with every provision of this Order,
16 or any order entered in this matter, the court will consider dismissing the matter pursuant to Rule
17 41(b) of the Federal Rules of Civil Procedure. *See Ferdik v. Bonzelet*, 963 F2d. 1258, 1260-61 (9th
18 Cir.)(district court may dismiss action for failure to comply with any order of the court), *cert.*
19 *denied*, 506 U.S. 915 (1992).

20 **SO ORDERED** this 2nd day of March, 2007.



**/s/ Hon. Frances M. Tydingco-Gatewood
Chief Judge**

² The District of Guam Local Rules are available on the District Court of Guam website found at www.gud.uscourts.gov/CourtInfo.htm, the Federal Rules of Civil Procedure are available online at www.law.cornell.edu/rules/frcp/. They are also available to the public at the Guam Territorial Law Library.